

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MARKEL NANCE,

Plaintiff,

-against-

JEFF NABOZNY, Individually and as an Officer of the New York State Department of Correction and Community Service, EUGENE RAIMO, Individually and as an Officer of the New York State Department of Correction and Community Service, JAMES HUNTINGTON, Individually and as an Officer of the New York State Department of Correction and Community Service, ROBERT GREGORY, Individually and as an Officer of the New York State Department of Correction and Community Service, D. JACKSON, Individually and as Registered Nurse Employed by the New York State Department of Correction and Community Service, JEREMY BYERS, Individually and as a Sergeant of the New York State Department of Correction and Community Service CHRISTOPHER MILLER, Individually and as a Superintendent of the New York State Department of Correction and Community Service,

Defendants.

**STIPULATION AND ORDER
OF DISCONTINUANCE
PURSUANT TO RULE 41(A)**

18-cv-398
(DNH)(ML)

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned, plaintiff Markel Nance, and the attorneys for plaintiff and defendants, the parties to the above-entitled action, that, whereas no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, the

above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties:

1. Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, plaintiff discontinues this action with prejudice and without damages, costs, interest or attorney's fees, and discharges and releases all defendants, and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of actions, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action, and further agrees to discontinue and/or not to commence or to pursue in any court, arbitration or administrative proceeding, any litigation or claims against the defendants and others released hereby pertaining to any circumstances or incidents as of the execution of this Stipulation and its being ordered by the Court, except as specifically provided in paragraph 5 of this settlement.

2. This action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

3. The parties agree that no provision of this settlement shall be interpreted to be an acknowledgment of the validity of any of the allegations or claims that have been made in the action.

4. This settlement does not constitute a determination of, or admission by any party to any underlying allegations, facts or merits of their respective positions. The settlement of this action is limited to the circumstances in this case alone and shall not be given effect beyond the specific provisions stipulated to. This settlement does not form and shall not be claimed as any

precedent for or an agreement by the parties to any generally applicable policy or procedure in the future.

5. Following the execution of this Stipulation, and its being ordered by the Court Plaintiff will be paid the sum of Ten Thousand (\$10,000) Dollars in full settlement of any and all claims. It is agreed that this sum includes all sums to which plaintiff is entitled, including but not limited to damages, costs, and attorney's fees. Plaintiff's check will be made payable to Markel Nance and Harding & Moore, as counsel for Markel Nance, and mailed to his counsel, James Harding, at Harding & Moore, 6813 Kessel Street, Forrest Hills, NY 11375, and Plaintiff's counsel shall be responsible for the distribution of said settlement check to the Plaintiff.

6. Payment of the amount specified in paragraph 5 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law and upon plaintiff's signing and returning a "Standard Voucher" which will be mailed to him by agents of the defendants responsible for the administrative processing of the settlement paperwork.

7. Payment of the amount referenced in paragraph 5 will be made within one hundred and twenty (120) days after the approval of this Stipulation by the Court and receipt by counsel of a copy of the so-ordered stipulation, unless the provisions of Chapter 62 of the Laws of 2001 apply to the plaintiff and the payment hereunder constitutes "funds of a convicted person" under the Son of Sam Law, in which event, the one hundred and twenty (120) day payment period shall be extended by an additional thirty (30) days to allow for compliance with that law.

8. In the event that the terms of paragraph 6 are satisfied, but payment is not made within the periods set forth in paragraph 7, interest shall begin to accrue on the outstanding principal

balance at the statutory rate on the 121st day after court approval or the 151st day after court approval if the provisions of Chapter 62 of the Laws of 2001 apply to plaintiff.

9. This stipulation shall be null and void if the approvals referred to in paragraph 6 are not obtained, and these actions shall then be placed back on the active docket without prejudice.

10. Plaintiff represents and warrants that he is not a Medicare recipient, that he has never been on Medicare or Social Security Disability, that no conditional payments have been made by Medicare, and that he does not expect to be a Medicare recipient within the next 30 months.

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11. The foregoing constitutes the entire agreement of the parties.

Dated: New York, New York

March 29th, 2021


James Harding
Harding & Moore
Attorneys for Plaintiff
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Forrest Hills, NY 11375
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Dated: Albany, New York
March 30, 2021

LETITIA JAMES
Attorney General of the State of New York
Attorney for Defendants
The Capitol, Albany, New York 12224-0341

/s William A. Scott

By: _____
WILLIAM SCOTT
Assistant Attorney General, of Counsel
Telephone: (518) 776-2255
Email: william.scott@ag.ny.gov

Dated: Utica, New York
_____, 2021

SO ORDERED:

HON. DAVID N. HURD
UNITED STATES DISTRICT JUDGE